

Tuesday, August 21, 2012

The Board met at its offices at 450 N Street, Sacramento, at 10:15 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Bertha Gaffney Gorman, 594551
2005, \$19,078.00 Tax, \$3,815.60 Penalty
For Appellant:
For Franchise Tax Board:

Bertha Gorman, Taxpayer
Tom Grossman, Tax Counsel
Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has established error in respondent Franchise Tax Board's proposed assessment, which is based on a federal determination.

Whether appellant has demonstrated grounds for removal of the accuracy-related penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 8.1](#))

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Eben Gossage, 546541
2003, \$127,127.00 Assessment
2004, \$149,894.00 Assessment
For Appellant:

Eben Gossage, Taxpayer
Joyce Rebhun, Representative
Daniel Biedler, Tax Counsel
Bill Hilson, Tax Counsel

For Franchise Tax Board:

Susanne Coakley, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown error in respondent's proposed assessment of additional tax based on respondent's determination of additional income from Zack's Incorporated Sausalito Marine.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board submitted the appeal for decision.

Diane Green, 539627
2004, \$49,059.00 Assessment
For Appellant:

Diane Green, Taxpayer
Joyce Rebhun, Representative
Susanne Coakley, Tax Counsel
Michael Cornez, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Note: These minutes are not final until Board approved.

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Issue: Whether appellant was a shareholder of Zack's Incorporated (Zack's), a subchapter S corporation, for the 2004 tax year and was therefore properly assessed additional tax on her proportionate share of the income from the S corporation.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 8.2](#))

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board submitted the appeal for decision.

The Board recessed at 11:34 a.m. and reconvened at 1:21 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARING

The Kelleher Corporation, 470475, 516087 (JH)

7-1-04 to 9-30-08, \$0.00 Claim for Refund

7-1-04 to 6-30-07, \$35,134.73 Tax

For Petitioner/Claimant:

Norman Jung, Representative

Steve Oldroyd, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the disallowed claimed nontaxable sales for resale.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARING

Proposed Adoption of Amendments to Property Tax Rules 313, *Hearing Procedure*, and 321, *Burden of Proof*

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the amendments, which incorporate and clarify the definition of "owner-occupied single-family dwelling" added by Assembly Bill No. 711 (Stats. 2011, ch. 220) ([Exhibit 8.3](#)).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Property Tax Rules 313, *Hearing Procedure*, and 321, *Burden of Proof*, as recommended by staff.

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LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Larry K. English, 263341, 336691, 336692 (KH)

1-1-00 to 12-31-00, \$11,601.77 Tax, \$0.00 Penalty

7-1-96 to 12-31-99, \$21,612.64 Tax, \$12,098.62 Fraud penalty, \$12,098.62 Amnesty Double Fraud Penalty, \$2,161.30 Failure-to-File Penalty, \$2,161.30 Amnesty Double Failure to File Penalty

1-1-01 to 3-31-03, \$7,546.15 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

The Shamrock Three, 489600 (JH)

10-1-04 to 9-30-07, \$17,576.94 Tax, \$1,909.49 Negligence Penalty, \$1,887.50 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Pamela Lynn Luong, 534630 (FH)

7-1-04 to 6-30-07, \$57,768.70 Tax, \$5,776.95 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Frangi's Restaurant, Inc., 433581 (AS)

1-1-98 to 9-30-00, \$177,036.72 Tax, \$191,613.21 Fraud Penalty, \$79,447.77 Amnesty Double Fraud Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Dansig, Inc., 493691 (EA)

1-1-06 to 12-31-08, \$43,905.13 Tax, \$8,284.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Cornelis A. Van Diepen, 560406*; and, *Tim Barth and Terri Barth, 562294*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Erik Hayes, 572579

2007, \$19,265.00 Tax, \$4,816.25 Late Filing Penalty, \$4,816.25 Demand Penalty

Carol Grant, 573205

2008, \$1,584 Tax, \$396 Late Filing Penalty, \$396 Demand Penalty

Eldo Klingenberg, 573235

2008, \$999.00 Tax, \$249.75 Late Filing Penalty, \$249.75 Demand Penalty

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Action: Sustain the action of the Franchise Tax Board and impose frivolous appeal penalties in the following amounts: \$750 on *Erik Hayes*, 572579; \$5,000 on *Carol Grant*, 573205; and, \$5,000 on *Eldo Klingenberg*, 573235.

Cornelis A. Van Diepen, 560406

Action: The Board took no action.

William Everett, 570365

2006, \$78,519.00 Claim for Refund

2007, \$79,124.00 Claim for Refund

2008, \$0.00 Claim for Refund

2009, \$0 .00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Fresno Mobile Radio, Inc., 560010

2003, \$2,733.80 Assessment

2004, \$2,124.11 Assessment

2005, \$1,863.46 Assessment

Action: Sustain the action of the Franchise Tax Board.

Konstantine Karavakis and Helen Karavakis, 573465

2004, \$38,738.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mark Peterson and Sandra Peterson, 539585

2005, \$1,135.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Gregory W. Reid, 552110

2006, \$1,748.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Cesar O. Sosa, Sr. and Virginia J. Gaeblein Sosa, 549397

2005, \$1,088.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Lisa A. Taylor, 534405

2006, \$1,112.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Robert Wessels and Malgorzata Mazany, 550884

2006, \$4,708.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Tim Barth and Terri Barth, 562294

Action: The Board took no action.

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Bonny Goselin, 550204

2004, \$3,299.00 Tax, \$824.75 Late Filing Penalty

Benjamin Killen, 554787

2007, \$1,887.00 Tax, \$471.75 Late Filing Penalty, \$471.75 Demand Penalty, \$113.00 Filing Enforcement Fee

Champion Wiseman, 523161

2007, \$1,550.00 Tax, \$387.50 Late Filing Penalty, \$387.50 Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Michael John Klemp, 568733

2003, \$4,296.00 Claim for Refund

Action: Deny the petition for rehearing.

John Lange, 559258

2007, \$318.00 Tax, \$79.50 Late Filing Penalty, \$176.75 Notice and Demand Penalty

2008, \$233.00 Tax, \$55.75 Late Filing Penalty, \$215.25 Notice and Demand Penalty

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Sacramento Valley LTD Partnership, 316928 (OH)*; *Contel Cellular California, Inc., 316916 (OH)*; and, *Verizon Wireless (VAW), LLC, 597112 (OH)*; the Board made the following orders:

Alaa Ismail, 478056 (GH)

4-1-96 to 3-31-05, \$927,340.54

Action: Approve the relief of penalty as recommended by staff.

Michael L. O'Neal, 479458 (KH)

7-1-01 to 12-15-03, \$285,197.36

Action: Approve the relief of penalty as recommended by staff.

Respironics, Inc., 533209 (OH)

7-1-05 to 3-6-08, \$338,939.56

Action: Approve the relief of penalty as recommended by staff.

Computer Programs and Systems, Inc., 571009 (OH)

1-1-07 to 6-30-10, \$338,628.68

Action: Approve the relief of penalty as recommended by staff.

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Eastside Entertainment, LLC, 566735 (AS)

3-12-07 to 12-31-08, \$118,729.01

Action: Approve the relief of penalty as recommended by staff.

La Curacao, 609752 (AS)

10-1-11 to 12-31-11, \$214,798.50

Action: Approve the redetermination as recommended by staff.

Hertz Equipment Rental Corp., 519479 (OH)

10-1-06 to 12-31-08, \$167,378.04

Action: Approve the denial of claim for refund as recommended by staff.

Sacramento Valley LTD Partnership, 316928 (OH)

4-1-02 to 6-30-04, \$5,397,692.08

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Contel Cellular California, Inc., 316916 (OH)

4-1-02 to 6-30-04, \$104,881.47

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Verizon Wireless (VAW), LLC, 597112 (OH)

1-1-06 to 6-30-10, \$2,167,904.70

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Digital Payment Technologies Corp., 533204 (OH)

4-1-06 to 12-31-09, \$192,986.86

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Target Corporation, 608641 (OH)*; and, *Verizon Wireless (VAW), LLC, 597112 (OH)*; the Board made the following orders:

The Masonry Group CA, Inc., 610924

1-1-03 to 12-31-08, \$292,045.92

Action: Approve the credit and cancellation as recommended by staff.

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Target Corporation, 608641 (OH)

1-1-07 to 12-31-09, \$805,504.82

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Fireside Bank, 595451 (CH)

7-1-11 to 9-30-11, \$147,823.00

Action: Approve the refund as recommended by staff.

Hertz Equipment Rental Corp., 519479 (OH)

10-1-06 to 12-31-08, \$382,833.01

Action: Approve the refund as recommended by staff.

KLA-Tencor Corporation, 491301 (GH)

10-1-06 to 12-31-09, \$1,303,757.11

Action: Approve the refund as recommended by staff.

Dino Pereira, 563371 (CH)

4-1-06 to 12-31-07, \$225,821.38

Action: Approve the refund as recommended by staff.

Schneider Electric USA, Inc., 533829 (OH)

4-1-07 to 6-30-09, \$225,421.75

Action: Approve the refund as recommended by staff.

Verizon Wireless (VAW), LLC, 597112 (OH)

1-1-06 to 6-30-10, \$1,481,724.54

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Western Asset Management Company, 594628 (AP)

7-1-08 to 6-30-11, \$212,058.33

Action: Approve the refund as recommended by staff.

Video Security Specialists, Inc., 607040 (AC)

7-1-08 6-30-10, \$119,550.39

Action: Approve the refund as recommended by staff.

KC Employees Fed CU, 596073 (AR)

4-1-10 to 9-30-10, \$181,490.00

Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corp., 595460 (OH)

7-1-11 to 12-31-11, \$212,931.00

Action: Approve the refund as recommended by staff.

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Xactware Solutions, Inc., 609507 (OH)

7-1-07 to 12-31-10, \$887,872.65

Action: Approve the refund as recommended by staff.

Spectrum Lithograph, Inc., 533196 (CH)

1-1-08 to 9-30-08, \$163,756.39

Action: Approve the refund as recommended by staff.

Digital Payment Technologies, Corp., 533204 (OH)

4-1-06 to 12-31-09, \$296,820.70

Action: Approve the refund as recommended by staff.

Conversant Healthcare Systems, Inc., 572972 (OH)

8-15-09 to 3-31-11, \$185,504.98

Action: Approve the refund as recommended by staff.

Genetic Chemistry, Inc., 593639 (GH)

4-28-08 to 12-31-10, \$112,075.00

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Guillermo Memo Estrada, 437729 (AR)

10-1-04 to 6-30-05, \$12,689.00 Tax, \$1,268.90 Failure to File Penalty, \$1,268.90 Finality Penalty

Considered by the Board: April 25, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Malvinder Sonny Matharu, 515190 (MT)

7-1-06 to 12-31-08, \$14,065.97 Fee

Considered by the Board: February 1, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Roberto Diffrancesco, 352493 (EH)

1-1-89 to 5-31-91, \$414,221.54

Considered by the Board: July 24, 2012

Note: These minutes are not final until Board approved.

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *Jim Lee Carlisle, Sr.; James Walter Elmer; Joanne Feldman; Fred Thomas Gates; Irma Herraes; and Jose Manuel Herraes; Jennifer Ing; Kwang Hoon Lee;* and, *Cosmo Lombino, Jr.*; as recommended by staff.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:25 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:56 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 21, 2012

Bertha Gaffney Gorman, 594551

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action with concessions by the Franchise Tax Board.

Eben Gossage, 546541

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Diane Green, 539627

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 21, 2012**

The Kelleher Corporation, 470475, 516087 (JH)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Horton. Ms. Steel made a substitute motion that 10 percent of the goods sold as part of the disputed sale to Crest Trim & Door should be regarded as actually resold by Crest, and that the amount of the error for this sale should thus be reduced by 10 percent, and the projection for stratum 2 recomputed accordingly, and that the petition otherwise be redetermined as recommended by the Appeals Division. The substitute motion was seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

The Board adjourned at 3:29 p.m.

The foregoing minutes are adopted by the Board on March 13, 2012.

Note: The following matters were removed from the calendar prior to the meeting: Lane Brennan, 557609; Ralph E. Sizemore, 572401; Capital City Restaurants, Inc., 522640 (KH); G & F Roof Supply, Inc., 444649 (AA); Global Air Com, Inc., 488913 (GH); Global Air Connection, LLC, 488785 (GH); C6 Scott Thomas Turner, 513953 (BH); and, Cities of Agoura Hills, Alameda, Albany, Bakersfield, Belmont, Berkeley, Beverly Hills, Brisbane, Calabasas, Campbell, Carlsbad, Chula Vista, Clovis, Compton, Cupertino, Daly City, Davis, Delano, Del Mar, East Palo Alto, El Cajon, El Monte, Emeryville, Escondido, Fillmore, Foster City, Fremont, Fresno, Gardena, Gilroy, Half Moon Bay, Hawthorne, Hayward, Kerman, Kingsburg, Los Angeles, Menlo Park, Milpitas, Moreno Valley, Morgan Hill, Palmdale, Palo Alto, Pasadena, Rancho Cordova, Rancho Palos Verdes, Redwood City, Reedley, Ridgecrest, Rolling Hills Estates, Roseville, Sacramento, San Bruno, San Diego, Sanger, San Jose, San Leandro, San Mateo, Santa Clara, Santa Fe Springs, Saratoga, Selma, Shafter, South San Francisco, Torrance, Union City, Westlake Village, West Sacramento, Woodland, Town of Los Gatos, Counties of Los Angeles and Sacramento, and City and County of San Francisco, 469672.

Wednesday, August 22, 2012

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Mar Dwatmadja Sijangga and Roslin Octavia Basuki, 533973 (CH)

4-1-04 to 3-31-07, \$13,591.12 Claim for Refund

For Claimant:

Cindy L. Ho, Attorney

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

Ms. Steel requested that staff provide a factsheet of the guidelines for setting the negligence penalty. Mr. Horton directed staff to provide the requested factsheet to the entire Board.

Northbay Wellness Group, 526954 (JH)

10-1-05 to 12-31-06, \$504,309.75 Tax, \$50,430.96 Failure to File Penalty

For Petitioner:

Dona Frank, Witness

James Carroll, Representative

Lisa L. Gyax, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's sales of medical marijuana qualify as exempt sales of medicine.

Whether petitioner is entitled to relief based upon reliance on erroneous written advice supplied by the Board.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Buy Rite Auto Wholesale, 523718 (KH)

1-1-05 to 12-31-07, \$3,270.82 Tax, \$00.00 Negligence Penalty

For Petitioner:

Chris McCracken, Taxpayer

Dona Riolo, Representative

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the unreported taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Note: These minutes are not final until Board approved.

Wednesday, August 22, 2012

The Board recessed at 11:22 a.m. and reconvened at 11:35 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Ron Cummings and Lenora Antoinette Cummings, 479484, 509237 (CH)
10-1-05 to 3-31-06, \$10,442.86 Tax, \$1,044.28 Negligence Penalty
4-1-06 to 10-31-08, \$56,393.62 Tax, \$4,275.81 Negligence Penalty, \$1,363.54 Failure to File Penalty

For Petitioner:

Ron Cummings, Taxpayer
Jeffery D. Applewhite, Representative
Daniel Piccinini, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the measure of unreported taxable sales.

Whether petitioner was negligent.

Whether petitioner has established reasonable cause to relieve the failure-to-file penalty for the period April 1 through October 31, 2008.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come (Exhibit 8.4).

Carolyn D. Lewis-Roussel, Associate Tax Auditor, Norwalk Office
Nattie Loaiza, Tax Technician II, San Diego Office
Daniel D. Minami, Business Taxes Compliance Specialist, Norwalk Office
Lilian M. Sibal, Office Assistant II (Typing), West Covina Office
Roberta Smith, Business Taxes Representative, Centralized Collection Section
Neil Vincent, Jr., Business Taxes Specialist II, San Diego Office

Action: Approve the Board Meeting Minutes of April 24-26, 2012.

Action: Approve continuation of the current Revenue and Taxation Code, section 6355, *Coins and Bullion*, "bulk" sale exemption threshold of \$1,500, as recommended by staff (Exhibit 8.5).

Wednesday, August 22, 2012

With respect to the Administrative Matters, Consent Agenda, upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board made the following order:

Action: Approve the Collection Cost Recovery Fee for 2013 as recommended by staff ([Exhibit 8.6](#)).

Exhibits to these minutes are incorporated by reference.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee – June 26, 2012

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 8.7](#)).

Business Taxes Committee – August 21, 2012

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 8.8](#)).

Property Tax Committee – August 21, 2012

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein ([Exhibit 8.9](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided a report regarding time extensions to Calaveras and San Benito Counties to complete and submit the 2012/13 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 8.10](#)).

Cynthia Bridges, Executive Director, presented the *Customer Service Improvements Initiative* ([Exhibit 8.11](#)).

Mr. Horton directed staff to place this initiative under the BOE's CSAE Committee, form the project team and draft a work plan for Ms. Steel's review and input.

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided a facilities update on the Headquarters Building located at 450 N Street, Sacramento.

Note: These minutes are not final until Board approved.

Wednesday, August 22, 2012

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2012/13 Budget, including information about a lumber assessment.

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding the 2013/14 Budget Change Proposals (BCPs) ([Exhibit 8.12](#)).

Ms. Houser introduced BCP No. 1: *Accounts Receivable Growth*, which requests resources to address the significant growth in the Board of Equalization accounts receivable (AR). Ms. Houser introduced Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department, who explained the three key elements of this proposal ([Exhibit 8.13](#)).

Mr. Runner requested that staff provide the amount of Accounts Receivable that is under installment payment plan agreements. Mr. Runner also requested that staff consider after-hours collection efforts.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved BCP No. 1: *Accounts Receivable Growth*, Element 3 – Enhanced Return Review Program, as recommended by staff.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved BCP No. 1: *Accounts Receivable Growth*, Element 2 – Expanding eServices, as recommended by staff.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner not participating, the Board approved BCP No. 1: *Accounts Receivable Growth*, Element 1 – Collection Program Expansion, as recommended by staff.

Ms. Houser introduced BCP No. 2: *Fuel Tax Swap Refund Workload*, which requests resources to continue processing workload associated with ABx8-6 and SB-70, the Fuel Tax Swap ([Exhibit 8.14](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved BCP No. 2: *Fuel Tax Swap Refund Workload*, as recommended by staff.

Ms. Houser introduced BCP No. 3: *Financial Information System of California (FI\$Cal) Implementation Resources*, which requests the necessary resources to plan, prepare, and interface with the FI\$Cal statewide project intended to reengineer the State business processes into a single system ([Exhibit 8.15](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved BCP No. 3: *FI\$Cal Implementation Resources*, as recommended by staff.

Ms. Houser introduced BCP No. 4: *Headquarters Facility Consolidation*, which requests funding to reimburse the Department of General Services (DGS) for any reasonable costs and or expenses to enter into a lease for a facility, relocating the BOE's Headquarters and annex facilities to a consolidated location ([Exhibit 8.16](#)).

Note: These minutes are not final until Board approved.

Wednesday, August 22, 2012

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved BCP No. 4: *Headquarters Facility Consolidation*, as recommended by staff.

Ms. Houser introduced BCP No. 5: *Repair of 450 N St. Building Deficiencies—Placeholder*, which serves as a BCP placeholder in anticipation of receiving the estimate from the Department of General Services (DGS) for the repair/replacement of the damaged drainage, waste and vent plumbing system and the repair/replacement of the spandrel glass portion of the window wall system for the DGS owned and managed 450 N Street building ([Exhibit 8.17](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved BCP No. 5: *Repair of 450 N St. Building Deficiencies—Placeholder*, as recommended by staff.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD AUGUST 22, 2012

Mar Dwatmadja Sijangga and Roslin Octavia Basuki, 533973 (CH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the claim be denied as recommended by the Appeals Division.

Northbay Wellness Group, 526954 (JH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Buy Rite Auto Wholesale, 523718 (KH)

Final Action: Mr. Runner moved to grant the petition. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ron Cummings and Lenora Antoinette Cummings, 479484, 509237 (CH)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the measure of unreported taxable sales be reduced to the midpoint between the amounts of sales petitioner reported to its landlord and the audited taxable sales, and that the petition otherwise be redetermined as recommended by the Appeals Division.

The Board adjourned at 1:31 p.m.

The foregoing minutes are adopted by the Board on March 13, 2013.

Note: These minutes are not final until Board approved.